

Article 9.

Instruments to Secure Equity Lines of Credit.

**§ 45-81. Definitions.**

The following definitions apply in this Article:

- (1) Authorized person. – Any borrower; the legal representative of any borrower; the attorney for any borrower; a title insurance company authorized pursuant to Article 26 of Chapter 58 of the General Statutes to issue title insurance policies in the State of North Carolina, but only when the company is acting in connection with a title insurance policy issued or to be issued with respect to property then encumbered by an existing equity line security instrument; or an attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when (i) the attorney, bank, savings and loan association, savings bank, or credit union is or was responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, property then encumbered by an existing equity line security instrument and (ii) a requirement of the sale or new loan transaction is or was that the property be conveyed or encumbered free and clear of the lien of the existing equity line security instrument.
- (2) Borrower. – A person primarily liable for payment or performance of an equity line of credit.
- (3) Equity line of credit. – An agreement in writing between a lender and a borrower for an extension of credit pursuant to which (i) at any time within a specified period not to exceed 30 years the borrower may request and the lender is obligated to provide advances up to an agreed aggregate limit; (ii) any repayments of principal by the borrower within the specified period will reduce the amount of advances counted against the aggregate limit; and (iii) the borrower's obligation to the lender is secured by an equity line security instrument.
- (4) Equity line security instrument. – An agreement, however denominated, that (i) creates or provides for an interest in real property to secure payment or performance of an equity line of credit, whether or not it also creates or provides for a lien on personal property; (ii) shows on its face the maximum principal amount which may be secured at any one time; and (iii) shows on its face that it secures an equity line of credit governed by the provisions of this Article. The term "equity line security instrument" includes a deed of trust and a mortgage.
- (5) Lender is obligated. – The lender is contractually bound to provide advances. The contract must set forth any events of default by the borrower, or other events not within the lender's control, which may relieve the lender from his obligation, and must state whether or not the lender has reserved the right to cancel or terminate the obligation.
- (6) Notice regarding future advances. – A written notice submitted under G.S. 45-82.3 to a lender that prevents certain advances made pursuant to an equity line of credit from being secured by the related equity line security instrument.
- (7) Owner. – Any person owning a present or future interest in the real property encumbered by an equity line security instrument, but does not mean the

trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, judgment lien, or any other lien on, or security interest in, the real property.

- (8) **Person.** – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (9) **Qualified lien holder.** – A person who has a mortgage or deed of trust on property already encumbered by an existing equity line security instrument, where that person's mortgage or deed of trust was recorded after the existing equity line security instrument and it appears from warranties or otherwise that the person's mortgage or deed of trust was not intended to be subordinate to the existing equity line security instrument. The term does not include a trustee under a deed of trust.
- (10) **Request to terminate an equity line of credit; and termination request.** – A written request submitted under G.S. 45-82.2 to a lender to terminate an equity line of credit. Each of the following shall be deemed a termination request: (i) a notification given pursuant to G.S. 45-36.9(a) requesting the lender to terminate the equity line of credit, (ii) a notification given pursuant to G.S. 45-36.9(a) containing a statement sufficient to terminate the effectiveness of the provision for future advances in the equity line security instrument, and (iii) a written request made by or on behalf of a borrower to a lender pursuant to G.S. 45-37 to satisfy a related equity line security instrument as a matter of public record. (1985, c. 207, s. 2; 1995, c. 237, s. 1; 2011-312, s. 20.)